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Attorneys for Plaintiff

For The Northern Mariana Islands
By _____
(Deputy Clerk)

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN MARIANA ISLANDS

MICHAEL W. KENNEDY dba MKI
AIRCONDITIONING and
REFRIGERATION,

Plaintiff,

vs.

ROSALINA T. GABUTIN,

Defendant

Civil Action No. CV-03-0016

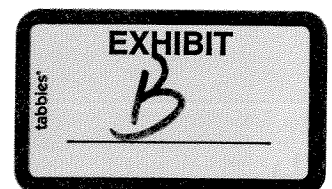
**SETTLEMENT AGREEMENT
and
CONSENT JUDGMENT THEREON**

Date: N/A
Time: N/A
Judge: Alex R. Munson

The parties to this Settlement Agreement, Plaintiff Michael W. Kennedy dba MKI Airconditioning and Refrigeration (MKI), and Defendant Rosalina T. Gabutin, wishing to settle the dispute between them by agreement, do hereby stipulate that the following Settlement Agreement shall be the full and final resolution of this case.

RECITALS

WHEREAS, Defendant Rosalina T. Gabutin was hired by MKI as an Administrative Assistant on or about February 8, 2001.



1 **WHEREAS**, Defendant was responsible for preparing checks for Plaintiff's and Mr.
2 Joseph Chiles'¹ signatures, updating and maintaining account balances, preparing payable and
3 receivable accounts for payment. Defendant also had access to the checks drawn from MKI's
4 various bank accounts with First Hawaiian Bank.

5 **WHEREAS**, from the period covering June 8, 2001 through November 20, 2001,
6 Defendant prepared various checks drawn from these accounts for issuance to different payees.
7 Defendant then forged the signature on these checks, such that they appeared to have been signed
8 by the payee and/or by an authorized signatory of MKI and brought them to FHB for check
9 cashing. Defendant unlawfully obtained the cash equivalent of these checks through fraud,
0 converted and disposed the same for her own use, to the damage of Plaintiff.

WHEREAS, the settling parties, recognizing that the issues raised by this litigation are not disputed and desiring to avoid further costly litigation, have agreed to settle the claims made by Plaintiff on the terms and conditions set forth in this Settlement Agreement; and,

WHEREAS, Defendant agrees to pay to Plaintiff the sum of money equivalent to all checks wrongfully and fraudulently issued and drawn against Plaintiff's bank accounts, which she converted and disposed for her own use.

WHEREAS, Plaintiff agrees to accept the sum of money and release Defendant from further liability and responsibility as alleged in the Complaint.

WHEREFORE, the settling parties agree as follows:

AGREEMENT

1. Settlement. Subject to the terms, covenants, and conditions set forth in this agreement, MKI and Rosalina T. Gabutin have agreed to settle the claims and other issues raised in this Civil Action No. CV 03-0016.

¹ Managing Partner of Michael Kennedy at MKI until Mr. Chiles' resignation in November, 2002.

1 2. Payment.

2 a. Principal. Rosalina T. Gabutin, in consideration of the Release executed
3 in this agreement by Plaintiff, hereby agree that she shall pay MKI,
4 through MKI's counsel, Smith & Williams, the principal sum of Sixty-
5 Eight Thousand Five Hundred Twelve and 14/100Dollars (\$68,512.14).

6 b. Pre-Judgment Interest. Rosalina T. Gabutin shall pay pre-judgment
7 interest on the principal sum at a rate of Twelve Percent (12.0%) per
8 annum beginning June 8, 2001 in the amount of Sixteen Thousand Six
9 Hundred Seventy-Two and 52/100 Dollars (\$16,672.52).

10 c. Attorneys' Fees. It is agreed that the sum of Three Thousand Seven
11 Hundred Forty-Two and 01/100 Dollars (\$3,742.01) is a reasonable
12 amount to be included in this Settlement Agreement as and for an amount
13 of reasonable attorney fees that Plaintiff would have been entitled to
14 receive from Defendant Rosalina T. Gabutin.

15 d. Post Judgment Interest. It is agreed that the Plaintiff shall receive post
16 judgment interest at a rate of Nine Percent (9.0%) per annum on the
17 judgment amount.

18 3. Consent Judgment. The parties intend this Settlement Agreement to be submitted
19 to the Court for review and that the terms and conditions set forth herein shall be incorporated in
20 a stipulated Consent Judgment executed and ordered by the Court.

21 4. Entry of Judgment. It is further stipulated and agreed that judgment may be
22 entered in accordance herewith by the Court without application and without notice to the other
23 party.

24 5. Continuing Jurisdiction. The District Court for the Northern Mariana Islands
25 shall have continuing jurisdiction over this matter to enforce any and all terms and conditions set
26 forth in the Stipulated Judgment.

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1 6. Release. All parties to this settlement agreement agree and understand that, by
2 executing this agreement, they hereby forever release and discharge one another and their heirs,
3 executors, administrators, successors and assigns, of and from each and every claim, cause of
4 action and demand, of whatever kind and nature, whether known or unknown, arising out of the
5 dispute set forth in the Complaint filed in this action, including but not limited to, the claims
6 asserted in and any claim for attorneys' fees or costs, which they may have against the other
7 parties, or any of them, or any of their present and former agents, servants, employees, attorneys,
8 consultants, advisors, owners, partners, parents, heirs, administrators, executors, successors and
9 assigns, the parties, or any of them, or their heirs, administrators, executors, successors or
10 assigns, individually, collectively, or in any other manner, ever had, now have or hereafter can,
11 shall or may have, for, upon or by reason of any matter, cause, act or thing whatsoever from the
12 beginning of the world to the date of this agreement, except that each party may enforce this
13 Settlement Agreement according to its terms.

14 7. Warranty of No Assignment. Plaintiff warrants and represents that it has not
15 assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or
16 any portion of any claim or interest in any claim that it may have had relating to the allegations
17 which is the subject of the agreement.

18 8. Agreement Binding. This agreement and each and every term, covenant,
19 condition and effect of it, including the waiver, discharge and release contained in shall be
20 binding upon and shall inure to the benefit of the respective heirs, executors, administrators,
21 representatives, assigns and successors in interest of the parties to this agreement.

22 9. Time of the Essence. All parties agree and acknowledge that time is of the
23 essence in this agreement.

24 10. Individual Warranty. Each party to this agreement hereby acknowledges and
25 affirmatively represents and warrants that he/she has full legal capacity, power and authority to
26 enter into this agreement and that this agreement constitutes a valid and binding obligation as to
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1 him or her enforceable in accordance with its terms. Each settling party further represents that
2 his or her attorney of record has been authorized to enter into this agreement on his or her behalf

3 11. Rules of Construction. In entering into this agreement, the parties represent that
4 the terms of this agreement have been completely read, translated and explained to them by their
5 attorneys and that such terms are fully understood and voluntarily accepted by them. Each party
6 and counsel for each party has reviewed and negotiated this agreement, and accordingly, the rule
7 of construction to the effect that any ambiguities are to be resolved against the drafting party
8 shall not be employed in the interpretation of this agreement.

9 12. Counterparts. Counterparts of this agreement may be executed for the
10 convenience of the parties to this agreement and each counterpart shall be deemed to be an
11 original instrument.

12 13. Choice of Law. This agreement shall be construed in accordance with the laws of
13 the Commonwealth of the Northern Mariana Islands.

14 14. Enforcement of Agreement. If any party to this agreement shall be required to
15 seek the assistance of the Court to enforce any portion of this agreement, then the prevailing
16 party shall be entitled to recover his costs including his attorney fees from the other party.

17 15. Amendment. This agreement may not be amended or altered except by an express
18 writing signed by the parties.

19 16. No Waiver. The failure by any party to this agreement to insist upon strict
20 performance of any of the terms and conditions of this agreement shall not be deemed a waiver
21 of any of the rights or remedies that such party may have, and shall not be deemed a waiver of
22 any subsequent breach or default. To be effective, any waiver with regard to this agreement must
23 be in writing and signed by the party granting the waiver. Any such waiver shall apply only to
24 the matter or instance specifically waived.

25 17. Entire Agreement. This agreement when executed and delivered, sets forth the
26 entire agreement between the parties to this agreement relating to the subject matter of this
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1 agreement and supersedes any and all prior communications, agreements, and understandings
2 pertaining to the subject matter of this agreement, except at to those areas within this agreement
3 that requires any of the parties to enter into separate agreements.

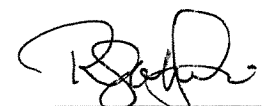
4 18. Not Dischargeable Under U.S. Bankruptcy Law. Defendant Gabutin agrees and
5 acknowledges that this debt is not dischargeable under U.S. Bankruptcy law.

6 19. Attorneys' Fees. If either party to this agreement shall be required to seek the
7 assistance of the court to enforce any portion of this agreement, then the prevailing party shall be
8 entitled to recover his costs including his attorney fees from the other party.


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10 **IN WITNESS WHEREOF**, the parties, through their respective counsel, have executed
11 this Settlement Agreement on the date so indicated.

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13 
14 MICHAEL W. KENNEDY
15 DBA MKI AIRCONDITIONING
& REFRIGERATION

16 Date: 11/24/03

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18 
19 ROSALINA T. GABUTIN

20 Date: 11/24/03

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22 
23 MARK K. WILLIAMS
24 Attorney for Plaintiff

25 Date: 11.24.03

26 RECEIVED

27 NOV 26 2003

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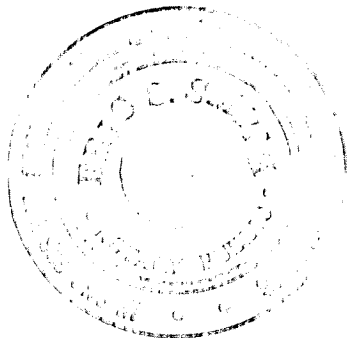
Clerk
District Court
For The Northern Mariana Islands


ACKNOWLEDGMENT

COMMONWEALTH OF THE
NORTHERN MARIANA ISLAND
SAIPAN,
NORTHERN MARIANA ISLANDS

On this 24 day of November, 2003, personally appeared before me, **ROSALINA T. GABUTIN**, known to me to be the same person whose signature is subscribed to the foregoing instrument, and I acknowledged that she executed the same voluntarily and for the purpose set forth herein.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the date written above.




NOTARY PUBLIC
ROSALINA T. GABUTIN
Notary of the Northern Mariana Islands
Commission expires on the
19th of Jan 2005

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